

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

STEPHEN H. WHITT,

Petitioner,

v.

WARDEN, LEBANON  
CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:15-CV-00560

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth P. Deavers

**OPINION AND ORDER**

On April 15, 2016, the Court denied Petitioner's *Motion for Certificate of Appealability*. (ECF No. 29.) Petitioner has filed a *Motion for Leave to appeal in forma pauperis* and *Request for a Three Judge Panel*. (ECF Nos. 31, 32.) For the reasons that follow, Petitioner's *Motion for Leave to appeal in forma pauperis* and *Request for a Three Judge Panel*, (ECF Nos. 31, 32), are **DENIED**.

Pursuant to 28 U.S.C. § 1915(a) (3), an appeal may not be taken *in forma pauperis* if the appeal is not taken in good faith. Federal Rule of Appellate Procedure 24(a)(3)(A) provides:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith[.]

*Id.* In addressing this standard, another court has explained:

The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962). An appeal is not taken in good faith if the issue presented is frivolous.

*Id.* Accordingly, it would be inconsistent for a district court to determine that a complaint is too frivolous to be served, yet has sufficient merit to support an appeal *in forma pauperis*. See *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir.1983).

*Frazier v. Hesson*, 40 F. Supp. 2d 957, 967 (W.D. Tenn.1999). Further,

“the standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith.” *U.S. v. Cahill–Masching*, 2002 WL 15701, \* 3 (N.D. Ill. Jan. 4, 2002). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 631 (7th Cir. 2000).

*Penny v. Booker*, No. 05–70147, 2006 WL 2008523, at \*1 (E.D. Mich. July 17, 2006).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith.

Petitioner has also filed a *Request for a Three Judge Panel* pursuant to 28 U.S.C. § 2284(a), which provides that “[a] district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.” Petitioner does not challenge the apportionment of congressional districts or a statewide legislative body, nor does he identify any Act of Congress requiring a three-judge panel in this case. Moreover, this Court is without jurisdiction to consider Petitioner’s motion pursuant to the filing of his appeal. See *Freeman v. Pineda*, No. 2:10-CV-00035, 2011 WL 1188410, at \*1 (S.D. Ohio March 28, 2011) (“The filing of a notice of appeal divests this Court of jurisdiction except to act in aid of the appeal.”) (citing *Adkins v. Jeffries*, 327 F. App’x 537, unpublished, 2009 WL 1083850, at \*2 (6th Cir. April 27, 2009)).

Therefore, Petitioner's *Motion for Leave to appeal in forma pauperis* and *Request for a Three Judge Panel*, (ECF Nos. 31, 32), are **DENIED**.

**IT IS SO ORDERED.**

Date: April 27, 2016

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s/James L. Graham  
JAMES L. GRAHAM  
United States District Judge